

29246-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

V

JESUS A. SOTO, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Mark E. Lindsey
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

29246-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

V

JESUS A. SOTO, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Mark E. Lindsey
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

INDEX

APPELLANT’S ASSIGNMENTS OF ERROR.....1

ISSUES PRESENTED.....1

STATEMENT OF THE CASE.....2

ARGUMENT5

 A. SUFFICIENT EVIDENCE SUPPORTED THE
 TRIAL COURT’S FACTUAL FINDING AND
 LEGAL CONCLUSION THAT DEFENDANT
 USED FORCIBLE COMPULSION TO HAVE
 SEXUAL CONTACT WITH THE VICTIM5

CONCLUSION.....9

TABLE OF AUTHORITIES

WASHINGTON CASES

STATE V. GREEN, 94 Wn.2d 216,
616 P.2d 628 (1980)..... 6

STATE V. PARTIN, 88 Wn.2d 899,
567 P.2d 1136 (1977)..... 6

STATE V. SALINAS, 119 Wn.2d 192,
829 P.2d 1068 (1992)..... 6

STATE V. SCOPY, 117 Wn.2d 55,
810 P.2d 1358, 815 P.2d 1362 (1991) 6

STATE V. THEROFF, 25 Wn. App. 590,
608 P.2d 1254, *aff'd*, 95 Wn.2d 385 (1980) 6

STATE V. THOMAS, 150 Wn.2d 821,
83 P.3d 970 (2004)..... 6

SUPREME COURT CASES

JACKSON V. VIRGINIA, 443 U.S. 307,
99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)..... 6

STATUTES

RCW 9A.44.010(6)..... 7

RCW 9A.44.100(1)(a) 5, 7

I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. Insufficient evidence was produced to support the trial court finding that defendant used forcible compulsion to have sexual contact with the victim.
2. The trial court erred in legally concluding that the defendant used forcible compulsion to have sexual contact with the victim and thereby is guilty of the crime of Indecent Liberties.

II.

ISSUES PRESENTED

1. Is evidence that defendant kissed victim and fondled victim's breasts over a ten minute period sufficient to establish forcible compulsion where victim initially agreed, then later refused the contact?
2. Did the evidence from the victim establish forcible compulsion beyond a reasonable doubt?

III.

STATEMENT OF THE CASE

On September 22, 2009 around 2:00 p.m., Veronica Murray received an “office slip” while she was in her college-prep class to report to the office of Cheney High School Vice Principal, Ray Picicci. RP 19-21. Ms. Murray left the classroom for Mr. Picicci’s office. RP 24. En route, Ms. Murray encountered the defendant at the “Red Square” hallway intersection in the school. RP 24. Defendant asked what she was doing and Ms. Murray indicated that she was going to Mr. Picicci’s office. RP 26. Defendant told Ms. Murray to follow him and he took her in another direction. RP 26.

Ms. Murray asked defendant several times where he was taking her, but he merely responded that she would see. RP 26. Eventually, defendant led Ms. Murray to an intersection where one way led outside and the other Ms. Murray thought would lead to the office. RP 27. Defendant told Ms. Murray to go thorough the doors and wait, then he went inside and opened the door for Ms. Murray. RP 28. Ms. Murray went through the door only to find that once through, she could not get back inside because the doors had no handles and were locked. RP 28. Ms. Murray believed that the room she found herself in was merely a hallway to her destination; however, when she saw the look on

defendant's face, she thought differently. RP 30. The only way out of the room, nick named the "white room," was through doors that exited the school completely. RP 30-31. Defendant closed the door that led back into the school once she was in the "white room." RP 31

Once inside the room, defendant explained how the cameras worked to Ms. Murray. RP 31-32. Defendant grabbed Ms. Murray by the waist when they were inside the "white room." RP 32. Defendant started groping Ms. Murray, touching her body, her breasts, rubbing her body and telling her not to worry. RP 32. Defendant warned Ms. Murray when she started to "freak out" because she did not really want to have sexual contact that if she left, the cameras would catch her. RP 33. Ms. Murray could feel the lust in defendant's throat and knew that she needed to get out of there. RP 34. Ms. Murray knew that defendant was too big for her to resist physically, so she suggested that they have such contact another time and place. RP 34. Nevertheless, defendant would not let Ms. Murray go until she promised twice to meet him another time and place to "make out." RP 34.

Ms. Murray told defendant more than twice to stop, but defendant is "a big guy" and she did not want to cause any problems because she was scared. RP 35. Ms. Murray did try to push defendant away, but he kept holding her around the waist and neck. RP 36. Defendant touched

Ms. Murray's breasts through her clothing, but she did not call out for help or hit him because she feared he would respond with violence. RP 37-40.

Ms. Murray was able to escape defendant's hold when she promised to go have fun, then she proceeded back to her class. RP 40-42.

Once back at her class, Ms. Murray eventually disclosed her ordeal to her friend Alex, her teacher, Mr. McFarland, Vice Principal Picicci, and Resource Officer Gilman. RP 41-45. Each of the individuals who interacted with Ms. Murray on September 22, 2209, after her incident with defendant described her shaky, nervous, crying, and upset. RP 77-79, 94, 113-115.

Defendant admitted forging the office slip to get Ms. Murray out of her sixth period class. RP 131. Defendant admitted taking Ms. Murray down the hallway and into the "white room." RP 133-34. Defendant admitted making out with Ms. Murray until she told him to stop when they heard a noise. RP 135-36. Defendant admitted kissing Ms. Murray and fondling her until she suggested that they meet at another time. RP 138. Defendant admitted that Ms. Murray told him to stop at least twice during the incident. RP 153. When he stopped, Ms. Murray exited the room and defendant left the school. RP 155. Defendant admitted being 5'7" tall and weighing 190 lbs while Ms. Murray was a foot shorter and weighed about 105 lbs. RP 157.

The trial court entered factual findings from the evidence that the elements of indecent liberties by forcible compulsion had been proved beyond a reasonable doubt. CP 2-7. Thereafter, the trial court entered its conclusion of law that the defendant was guilty of indecent liberties by forcible compulsion as charged in the information. CP 2-7. Defendant filed this appeal challenging the trial court's factual findings and legal conclusion as being unsupported by the evidence before the court.

IV.

ARGUMENT

A. SUFFICIENT EVIDENCE SUPPORTED THE TRIAL COURT'S FACTUAL FINDING AND LEGAL CONCLUSION THAT DEFENDANT USED FORCIBLE COMPULSION TO HAVE SEXUAL CONTACT WITH THE VICTIM.

Defendant was charged by Information with Indecent Liberties by

Forcible Compulsion pursuant to RCW 9A.44.100(1)(a) as follows:

INDECENT LIBERTIES, committed as follows: That the defendant, JESUS ABRAHM SOTO, in the State of Washington, on or about September 22, 2009, by forcible compulsion, did knowingly cause VERONICA MURRY, not the spouse of defendant, to have sexual contact with the defendant or another,

RCW 9A.44.100(1)(a).

Defendant contends there is insufficient evidence of forcible compulsion to support his conviction for indecent liberties. The relevant inquiry on a challenge to the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *See State v. Scoby*, 117 Wn.2d 55, 61, 810 P.2d 1358, 815 P.2d 1362 (1991); *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980). When the sufficiency of evidence in a criminal case is challenged, the appellate court draws all reasonable inferences from the evidence in favor of the State and interprets those inferences most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385 (1980); *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Credibility determinations are for the trier of fact and are not subject to review. *State v. Thomas*, 150 Wn.2d 821, 875, 83 P.3d 970 (2004). Appellate courts must defer to the trier of fact regarding issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *Thomas*, 150 Wn.2d at 875.

As previously noted, the essential elements of indecent liberties by forcible compulsion are: “the person knowingly (1) engaged in sexual contact (2) by forcible compulsion, (3) with another under who is not the person’s spouse. RCW 9A.44.100(1)(a). Defendant’s argument challenges only the second element, forcible compulsion. “ ‘Forcible compulsion’ means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself” RCW 9A.44.010(6). Defendant presents no authority for his claim that evidence of brutality or physical injury is required.

Defendant asserts that the State failed to show that he committed a sexual act with forcible compulsion. Accepting the trial court’s evaluation of the credibility of the witnesses, this Court must view the evidence in the light most favorable to the State. The testimony of the victim, Ms. Murray is sufficient evidence for a reasonable trier of fact to find beyond a reasonable doubt that defendant is guilty of indecent liberties by forcible compulsion since defendant essentially committed an assault when he continued touching the victim after she had twice indicated that his touching was unwanted.

Ms. Murray’s testimony established the requirements for indecent liberties. She testified that defendant led her into and trapped her in the white room. RP 30-31. Once the door was closed, defendant grabbed Ms.

Murray by the waist. RP 32. Defendant then started groping her, touching her body, her breasts, rubbing her and telling her not to worry. RP 33. When Ms. Murray started to freak out because she did not want to succumb to defendant's sexual advances, defendant warned her that the cameras would catch her. RP 33. When victim could "feel the lust in his throat" she thought about extricating herself from the situation, yet realized that she could not resist forcefully because of defendant's size. RP. 34. She testified that she told him to stop and tried to push him away but their size differences prevented her efforts. RP 36. Ms. Murray concluded that she might be able to talk her way out of the situation by promising defendant that they could do this another time. RP 34. Nevertheless, defendant did not cease his sexual contact with Ms. Murray until she promised defendant twice that she would agree to make out another time. RP 34. Based on this testimony a rational trier of fact could find, and did, that defendant communicated his intent to use physical force in order to secure Ms. Murray's compliance. Ms. Murray's testimony is sufficient to establish forcible compulsion, and her testimony is further supported by the additional witness testimony about the victim's state shortly after the incident. The existence of sufficient evidence to show that defendant knowingly caused another person to have sexual contact

with him by forcible compulsion supports the trial court's conviction of him for indecent liberties and should be affirmed.

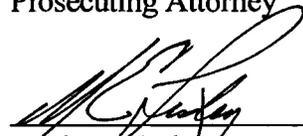
V.

CONCLUSION

For the reasons stated, the conviction should be affirmed.

Respectfully submitted this 29TH day of November, 2010.

STEVEN J. TUCKER
Prosecuting Attorney



Mark E. Lindsey #18272
Senior Deputy Prosecuting Attorney
Attorney for Respondent